EAS-EPS.

Supreme Court of the United States

OCTOBER TERM—1945

No. 1004-1005 (1)

EASTERN TRANSPORTATION COMPANY,
Petitioner,

against

RITNER K. WALLING and MARTUG TOWING COMPANY,
Respondents.

PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF

CHRISTOPHER E. HECKMAN,
Attorney for Petitioner.

JUDICIAL PRINTING CO., INC., 82 BEEKMAN ST., N. Y.—BARCLAY 7—3648-9 182

INDEX

Table of Cases Cited

Other Authorities Cited

Supreme Court of the United States

OCTOBER TERM—1945

No. .....

EASTERN TRANSPORTATION COMPANY,
Petitioner,

against

RITNER K. WALLING and MARTUG TOWING COMPANY,
Respondents.

PETITIONS FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Eastern Transportation Company, owner and claimant of the steam tug "Montrose," respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

These are petitions for writs of certiorari to the United States Circuit Court of Appeals for the Third Circuit to review its decision, filed December 28, 1945, reported at 152 F. (2d) 924, affirming decrees of the United States District Court for the Eastern District of Pennsylvania, entered in two cases in Admiralty, upon a decision dated

August 25, 1944, and findings of fact and conclusions of law.

The litigation arose out of a collision which occurred during darkness, on May 5th, 1943, between petitioner's tug "Montrose," proceeding, without tow, westward through the Chesapeake & Delaware Canal and the barge "Mamei," owned by respondent Ritner K. Walling in tow of tug "Caspian," owned by respondent Martug Towing Company, assisted by the tug "Hudson," not a party to these or the lower Court proceedings.

As the District Court found and as the Circuit Court of Appeals recognized in its opinion, the collision was brought about because the navigator of the "Montrose" was confused by the arrangement of lights on the flotilla consisting of the barge "Mamei" with the tug "Hudson" on her starboard side and the tug "Caspian" on her port side. Structures on the deck of the "Mamei" obstructed the visibility of the starboard (green) side light of the "Caspian," which should have been visible to the "Montrose," as the latter approached the "Mamei" flotilla. Because such lights of the "Caspian" as could be seen indicated a vessel proceeding in the same direction as the "Montrose," the latter's navigator did not consider her a part of the "Mamei" flotilla and did not discover the true situation until the vessels were too close to avoid collision. There was no lookout on the forward part of the "Mamei" flotilla, and a member of the "Caspian's" crew who observed, before her navigator, danger of collision did not report it to the navigator.

Your petitioner contended that the arrangement of lights on the "Mamei" flotilla did not comply with Section 312.16 of the Regulations Promulgated by the Board of Supervising Inspectors (set forth in the appendix, p. 6), pursuant to Provisions of 33 U. S. C. A. Sec. 157, which provide that if the superstructure of a barge interferes with the visibility of either colored light of a vessel towing

such barge, the barge must carry a light of the same color as the one she obstructs. No such light was carried by the "Mamei."

Your petitioner also contended that the failure of those in charge of the navigation of the "Mamei" flotilla to station a lookout in the forward part of the vessel, placed upon those responsible for her navigation the obligation to show that the absence of such lookout could not have contributed to the collision.

The majority of Circuit Court construed the regulation for lights to apply only when a vessel, such as the "Mamei," is in tow of one tug, but held it inapplicable in this case because more than one tug was towing.

In a separate opinion, Circuit Judge Biggs, disagreed with this interpretation and held that a correct construction of the rule required the "Mamei" to display a green light on her superstructure, on her starboard side, and a red light on her superstructure, on her port side; and further stated that, in his opinion, the interpretation by the majority of the Circuit Court "*will greatly heighten the risk of collision in the inland waters subject to the rule.*"

The Circuit Court of Appeals, erroneously, your petitioner contends, held that your petitioner was obliged to show that the absence of proper lookouts on the "Mamei" flotilla contributed to the collision.

It is petitioner's position that the interpretation of the rules for lights by the majority of the Circuit Court of Appeals will greatly heighten the risk of collision in inland waters, as Judge Biggs stated in his separate opinion, and that the Circuit Court of Appeals should have placed upon the respondents, the burden of establishing that the lack of lookouts on the "Mamei" flotilla could not have contributed to the collision.

Your petitioner contends that the "Mamei" was at fault in not displaying lights required by the regulation of

the Supervising Inspectors, which has the force of law, and that the "Caspian," which was in charge of the "Mamei" flotilla, is at fault and must share responsibility on the same ground and also on the ground that she did not station a proper lookout.

B

Reasons for Allowance of the Writs

1. The case involves an interpretation of a rule regulating the lights to be displayed upon barges in tow of tugs in a great number of the inland waters of the United States, where traffic is heavy and where utmost care and caution must be exercised to avoid serious collisions with substantial resultant damage.

One member of the Court which rendered the decision has stated that in his opinion the construction of the rule by the majority of the Court is not the correct one and that such construction will greatly heighten the risk of collision.

It is of the utmost importance to the entire marine industry that there be a final and authoritative interpretation of such rule, which as far as research discloses has not been construed by this Court or any other Circuit Court of Appeals.

2. The Circuit Court of Appeals holding that the petitioner in this case was obliged to show that the absence of lookouts on the colliding flotilla contributed to the collision is in conflict with decisions of the Circuit Courts of Appeal for other circuits on an important matter.

WHEREFORE, your petitioner respectfully prays that writs of certiorari be issued out of and under the seal of this

Honorable Court, directed to the Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered and entitled on its docket 8876, October Term, 1945, Ritner K. Walling against Tug "Montrose," Eastern Transportation Company, Tug "Caspian," and Martug Towing Company; and 8877, In the Matter of the Petition of Martug Towing Company, owner of the "Caspian" for exoneration from or limitation of liability, against Eastern Transportation Company, and that said decree of the Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioner may have such other relief in the premises as may seem just.

EASTERN TRANSPORTATION COMPANY

By CHRISTOPHER E. HECKMAN,
Attorney for Petitioner.

Appendix

Pertinent Fifth paragraph of Section 312.16; of Regulations Promulgated by the Board of Supervising Inspectors, Pursuant to Provisions of 33 U. S. C. A. Sec. 157.

> "Barges or canal boats towing alongside a steam vessel shall, if the deck, deck houses, or cargo of the barge or canal boat be so high above water as to obscure the side lights of the towing steamer when being towed on the starboard side of the steamer, carry a green light upon the starboard side; and when towed on the port side of the steamer, a red light on the port side of the barge or canal boat. * * *"

Supreme Court of the United States

OCTOBER TERM—1945

No. .....

EASTERN TRANSPORTATION COMPANY,
Petitioner,

against

RITNER K. WALLING and MARTUG TOWING COMPANY,
Respondents.

BRIEF IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI

I

Opinions of the Courts below.

The District Court rendered a decision (R. 71a), 57 F. Supp. 539, and findings of fact and conclusions of law (R. 82a) on which in the case of Ritner K. Walling against the tug "Montrose" and the tug "Caspian" it rendered a decree in favor of libellant, Ritner K. Walling, against the tug "Montrose," awarding such libellant full recovery of its damages, and in the proceeding entitled in the matter of the petition of Martug Towing Company, owner of the "Caspian," for limitation of liability, a decree exonerating the Martug Towing Company and the "Caspian" from all responsibility.

The Circuit Court of Appeals affirmed the decrees of the District Court, with an opinion filed December 28, 1945, 152 F. (2nd) 924.

II

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925, U. S. Code, Title 28, Section 347. The decree (order for mandate) sought to be reviewed was entered on December 28, 1945.

III

Statement of the case.

A summary statement of the case is contained in the petition and is here omitted in the interest of brevity.

IV

Specification of errors.

The Circuit Court of Appeals erred in the following respects:

1. In failing to find that the lights displayed by the "Mamei" were not in conformity with Section 312.16 of the regulations promulgated by the Board of Supervising Inspectors (appendix, p. 6), pursuant to Provision 33 U. S. C. A. Sec. 157, and in failing to find that the owner of the "Mamei" did not prove such violation could not have contributed to the collision.

2. In failing to find that the tug "Caspian," which was in charge of the "Mamei" tow, shared responsibility with the "Mamei" for the proper arrangement of lights on the "Mamei."

3. In failing to find that the failure of the "Mamei" and the "Caspian" to display lights required by the regulations contributed to the collision.

4. In failing to find that the absence of a lookout on the "Mamei" flotilla, for which the tug "Caspian" was responsible, contributed to the collision.

5. In failing to find that the "Caspian" was obliged to prove that the absence of a properly stationed lookout could not have contributed to the collision.

ARGUMENT

POINT I

The majority of the Circuit Court of Appeals erred in its interpretation of the regulation for lights to be displayed by the "Mamei."

The only ground stated by the majority of the Court for its holding that the "Mamei" was not obliged to display a green light on her starboard side because her superstructure obstructed the green light of the "Caspian," and a red light on her port side because her superstructure obstructed the red light of the "Hudson," is that the rule by its terms relates to "barges or canal boats towing alongside a steam vessel," whereas the "Mamei" was being towed by two, not a single steam vessel. As already pointed out, the third member of the Court, Judge Biggs, differed and stated squarely that in his opinion the rule applies when the superstructure of the barge obstructs the

light of any towing vessel alongside, whether there be one or more than one towing vessels.

The majority of the Court was of the opinion that when there is a tug on either side of a towed barge and the outer side light of either of these tugs is not effected by any obstruction on the barge but which obstruction interferes with the view of the inner side lights of the respective tugs that therefore in such a situation there is no need for light on the barge. The fallacy of this assertion is well demonstrated in the present case. There was a bend in the canal near the place of collision so that the "Montrose" was approaching a definite point on the starboard bow of the "Mamei" flotilla and thus the green starboard light on the right side of the "Hudson," the tug on the right side of the "Mamei," and the green starboard light of the "Caspian," the tug on the left side of the "Mamei," should have been in view. The green starboard side light of the "Caspian" was shut out from view of the "Montrose" by reason of the obstruction on the "Mamei's" deck.

Neither red port lights of the respective tugs were visible to the "Montrose" as they complied with Article 2 of the Navigation Rules (33 U. S. C. A. 172) requiring side lights of vessels to be arranged to show through an arc of the compass from right ahead to two points abaft of beam but screened so as to prevent these lights from being seen across the respective bows.

The "Montrose" navigator saw the white lights which are required by regulation to be displayed; (cf. Articles 2 and 3, 33 U. S. C. A. 172, 173). Seeing no colored light close to them, he thought the white lights were displayed by a vessel proceeding in the same direction as it is in only such a situation that one colored light of a vessel, if properly arranged, cannot be seen.

The "Mamei" being 52 feet wide, the white lights of the "Caspian" were so far from the "Hudson's" green

light which the "Montrose" saw that they appeared to be on a vessel moving separately and not a part of the "Hudson-Mamei" flotilla. The majority of the Circuit Court recognized that this confused White, the navigator of the "Montrose," and in all probability brought about the collision, saying in its opinion:

> "It may very well have been these errors in estimating the situation which led Captain White to the ultimate collision."

Despite its own statement that the collision "may very well have been" brought about by deceptive and confusing lights, the majority of the Court approved such arrangement as being in compliance with the rule.

The majority of the Circuit Court said:

> "It may very well be that exhibition by "Mamei" of both her running lights in this situation would merely serve to confuse a vessel approaching from an opposite direction."

It did not indicate how the navigator of the "Montrose" would have been confused if the "Mamei" had been displaying proper running lights. On the contrary, we submit that the navigator of the "Montrose" or of any other vessel similarly situated, having full knowledge of all regulations, could not assume anything other than that a vessel showing one or more colored lights was an approaching vessel.

The Courts have long recognized that the rules for the display of lights on vessels are of the utmost importance.

Eugene F. Moran, 212 U. S. 466;
The Titan, 23 Fed. 413;
The Conoho, 24 Fed. 758;
The Oliver, 22 Fed. 848;
Seaboard Shipping Corp. v. *Globe Oil Delivery Corp.*, 93 F. (2d) 463.

It is well settled that a vessel whose lights, at the time of collision, are not properly set must meet the burden of proving that the violation not only did not, but could not, have contributed to the collision.

Seaboard Shipping Corp. v. *Globe Oil Delivery Corp.*, 93 F. (2d) 463.

As already pointed out, the majority of the Court recognized that the arrangement of the lights on the "Mamei" flotilla may very well have led the "Montrose" navigator to the ultimate collision. This, we submit, plainly constitutes a holding that the arrangement of the "Mamei's" lights was a contributing cause of the collision. If the majority of the Court had construed the rule to require colored lights on the "Mamei," as did Judge Biggs in his concurring opinion, then, we submit, the Court obviously would have concluded that the violation of the regulation was a contributing cause of the collision.

POINT II

The tug in charge of the tow, and the barge in tow, are jointly liable for failure to display lights as required.

The Eugene F. Moran, 212 U. S. 466; 53 L. Ed. 600.

POINT III

The Circuit Court of Appeals erred in failing to place upon the tug "Caspian" the burden of proving that the lack of a lookout did not contribute to the collision, and its decision is in conflict with those of other circuits.

As the Circuit Court of Appeals pointed out in its opinion, the "Mamei's" bridge is 312 feet aft of her stem, and there was no lookout on this flotilla forward of the "Mamei's" bridge. This Court has held, as strongly as words permit, that a lookout must be in the forward part of the vessel.

In *The Ottawa*, 70 U. S. 269-275, 3 Wall. 268, 18 L. Ed. 165, the Court held:

> "• • • Proper lookouts are competent persons other than the master and helmsman, properly stationed for that purpose, on the forward part of the vessel; and the pilot house in the night time, especially if it is very dark, and the view is obstructed, is not the proper place."
>
> *The Ogdensburg*, 62 U. S. 548, 21 How. 548, 16 L. Ed. 211.

So have the Circuit Courts of Appeal for various Circuits.

> *The Catalina* (CCA-9), 95 F. (2d) 283;
> *The Vedamore* (CCA-4), 137 F. 844;
> *The Hawaiian* (CCA-4), 124 F. (2d) 45;
> *U. S.* v. *Gould* (CCA-1), 73 F. (2d) 1016; affirming 55 F. (2d) 674;
> *The Choctaw* (CCA-6), 270 Fed. 114.

By its holding that petitioner "would have to show not only that there was an absence of proper lookouts, but also

that such a lack of lookouts contributed to the collision," the Court disregarded the cardinal rule in collision cases that the necessity for a lookout is so great the ship which fails to properly station one is deemed at fault unless she shows his absence could not have contributed to the collision.

In *The Ariadne,* 80 U. S. (13 Wall.) 475, this Court, speaking of a lookout's duty, and the requirement that a lookout be properly stationed, said:

> "It is the duty of all courts charged with the administration of this branch of our jurisprudence to give it the fullest effect whenever the circumstances are such as to call for its application. Every doubt as to the performance of the duty, and the effect of nonperformance, should be resolved against the vessel sought to be inculpated until she vindicates herself by testimony conclusive to the contrary."

Until this decision was rendered, the Circuit Courts have followed the directions of this Court in *The Ariadne, supra.*

The Madison, 250 Fed. 850, C. C. A. 2nd;
The Pilot Boy, 115 Fed. 873, C. C. A. 4th;
The City of Augusta, 80 Fed. 297, C. C. A. 1st.

CONCLUSION

The petitions should be granted.

Respectfully submitted,

CHRISTOPHER E. HECKMAN,
Attorney for Petitioner.

Supreme Court

No. 1004-1005

October Term, 1945.

EASTERN TRANSPORTATION COMPANY,

RITNER E. WALLACE, as Trustee [illegible]

BRIEF [illegible]

International, 25 Chambers St., Phila., U.S.A.

INDEX TO BRIEF.

CASES CITED.

IN THE

Supreme Court of the United States.

No. OCTOBER TERM, 1945.

EASTERN TRANSPORTATION COMPANY,

Petitioner,

v.

RITNER K. WALLING AND MARTUG TOWING COMPANY,

Respondents.

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI.

The petitions should be denied.

I. There has been a correct interpretation of the Pilot Rule regulating lights to be displayed upon a barge with two tugs abreast, in an inland canal, which Rule follows:

> "Barges or canal boats towing alongside a steam vessel shall, if the deck, deck houses, or cargo of the barge or canal boat be so high above water as to obscure the side lights of the towing steamer when being towed on the starboard side of the steamer, carry a green light upon the starboard side; and when towed on the port side of the steamer, a red light on the port side of the barge or

---

Note: The petitioner has only filed as the record its own appendix in the Circuit Court of Appeals for the Third Circuit. The Court considered other testimony than that in the Appendix, being testimony incorporated in the briefs of both the respondents, and so that that testimony may be available, as well as the entire record, the respondent here is printing as an appendix that portion of its testimony which is in addition to that set forth in the petitioner's appendix; and likewise, the entire record has now been sent to your Honorable Court by the Circuit Court of Appeals.

canal boat; and if there is more than one barge or canal boat abreast, the colored lights shall be displayed from the outer side of the outside barges or canal boats." (App. 96, 97.)

(It is to be noted that petitioner in its brief has not copied the rule in full.)

The facts are as follows, which are from the Findings of the Trial Judge:

"4. * * * Prior to leaving Town Point that evening the Mamei under orders of Captain Middleton was exhibiting two white all horizon lights 6′ apart on a cross-arm aft of her wheel house, and 6′ above it, and such lights were 36 to 38′ above the surface of the water. She also had a stern light which showed aft; and a white light which was hung on her bow 6 or 7′ feet from her forward rail, in accordance with the custom pursued by vessels navigating in the Chesapeake & Delaware Ship Canal to show an oil white light on the port bow of a barge navigating those waters in tow of tug or tugs alongside. In addition the lights inside the forecastle were lighted and some light could be seen from them, but no portion of these lights showed forward." (App. 82a, 83a)

"5. The tug Caspian * * * was exhibiting red and green running lights at a point about 20′ aft of her stem on top of her pilot house, and about 21½′ from the surface of the water; she also had two white towing lights arranged vertically on her forward mast five feet aft of her stem, the top light being 42′ and the lower one being 38′ above the surface of the water, both showing all around the horizon." (App. 83a)

"6. That the tug Hudson was exhibiting red and green running lights on top of her pilot house, 24′ above the surface of the water, and she had a white range light forward 15′ above the surface of the water, as well as

two white towing lights vertical on her mast, the top one being 44′ and the lower one 39′ above the surface of the water, and both of them showed all around the horizon." (App. 83a)

The barge had four kingposts on each side of her main-deck forward of the bridge, spaced fifty feet apart fore and aft, fifteen feet from side to side, eighteen inches in diameter and twenty feet high. These kingposts were about twenty-eight feet above the water and as the learned Trial Judge found (Finding No. 4, App. 83a) the slight curvature of the canal at the point of collision provided, at most, but momentary obstruction to the running lights of the Caspian and a competent lookout in view of this space could have observed the same. It is also a fact that at all times Captain White of the Montrose could see the green light of the Hudson, which was on the far side of the flotilla. In addition, in the ninth article of the answer of the petitioner to the libel, the petitioner admits that it saw the lights, because it states as follows:

"• • • Shortly thereafter she saw the running lights of a vessel on the south shore. The 'Montrose' kept steerageway intending to pass between these two indicated vessels. *As she came nearer she discovered the aforesaid lights were on two small tugs, the 'Hudson' and the 'Caspian,' which had a large ocean-going barge between them.* Upon discovering the situation the 'Montrose' stopped and backed, but nevertheless collision happened." (Italics ours)

The Circuit Court held that the foregoing Pilot Rule, by its very terms, did not apply to the situation here existing, in which the barge was being towed by two tugs, one on either side (App. 97a):

"We are unable to find any statutory rule, or one based upon statutory power, which requires a barge being towed by a tug on either side to display her run-

ning lights as asserted by appellant. The omission to so provide cannot be regarded as a mere oversight. On the contrary, it seems to us that such an omission must be regarded as intentional. There is a sound practical reason for this: since the barge has a tug on each side, the outboard running light of each tug would compensate for any inability to see the inboard running light of the other tug. Thus, in the case at bar, even assuming an obscuration of Caspian's starboard light by the king posts, since Caspian was on Mamei's port quarter and Hudson was on Mamei's starboard quarter, Hudson's starboard light admittedly not obscured would compensate for any lack of sight of Caspian's starboard light. It may very well be that exhibition by Mamei of both her running lights in this situation would merely serve to confuse a vessel approaching from an opposite direction. Since neither Congress nor the navigational authorities have made any requirement that a barge being towed by a tug on either side should display both her running lights in circumstances like those under discussion, we must conclude that no reason exists for such requirement, and consequently we should be hesitant to find one in this case.

"In any event, we are not convinced that any obscuring of Caspian's lights either existed in the case at bar or contributed to the collision."

Judge Biggs filed a concurring opinion, but in it he was of the opinion that the above interpretation of the Rule will heighten the risk of collision in the inland waters (App. 101). In that, we feel he is clearly in error and we believe that that is the opinion of seafaring men who are familiar with lights in the inland waters. In other words, the more lights would tend to heighten the risk instead of lessening it.

II. There is no conflict of authority between the decision of the Third Circuit in this case and any other Circuit with reference to the absence of a lookout at the bow of the barge. The facts in that connection are as follows:

Captain Middleton, in charge of the towing operation, was on the bridge of the "Mamei" at the time of the collision, together with Captain Paulsen of the barge and the helmsman. The view forward from the bridge was unobstructed; the testimony showed that eye-level for a man five feet tall would be 1½ feet above the top of the king-posts (App. 60a).

Captain Middleton and Captain Paulsen each observed the lights of the tug "Montrose" as soon as the slight curve in the canal brought her within view; Captain Middleton estimated that the "Montrose" was ½ mile away at that time (App. 8a). Both captains continued to observe the oncoming tug, and they described her movements in detail from the time they first sighted her until she changed course and crashed into the bow of the barge (App. 8a to 10a; 62a and 63a).

The opinion of the Circuit Court stated (App. 99a):

> "We conclude that 'Mamei's' lookouts were proper under the circumstances since Captain Middleton and Captain Paulsen had an obstructed view: The Catalina, 95 F. 2d 283 (C. C. A. 9, 1938); Puratich v. United States, 126 F. 2d 914 (C. C. A. 9, 1942). • • •
> "Under the circumstances of this case, we conclude that the presence of lookouts up forward on the 'Mamei' would not have prevented the collision."

Petitioner complains that the Circuit Court improperly shifted the "burden of proof" on the adequacy of lookouts, and its connection with the collision. We do not so understand the language of the opinion. The Court said (App. 99a):

> "In any event, appellant would have to show not only that there was an absence of proper lookouts but also

that such a lack of lookouts contributed to the collision. Fault alone is insufficient to engender liability. Causal relationship between the fault and the collision is essential."

Absence of proper lookout on the "Mamei" is an affirmative defense asserted by petitioner, on which it has the burden of proof. If petitioner had established fault, respondents would then have been required to adduce proof that such fault not only did not cause or contribute to the collision, but that it could not possibly have been a causative or contributing factor: *The Pennsylvania,* 86 U. S. 125 (1873).

The testimony shows, and the Circuit Court held, that there was no such fault.

(a) Sufficient reason has been shown for not placing a lookout at the bow of the barge.

(b) All the cases referred to by the petitioner are distinguishable, and certainly do not conflict.

Conclusion.

We repeat, the petitions should be denied.

Respectfully submitted,

JOSEPH W. HENDERSON,
1910 Packard Building,
Philadelphia 2, Pennsylvania.
Attorney for Respondent,
Martug Towing Company.

APPENDIX.

Captain A. C. Middleton.

[Testimony, p. 71] "Q. Then you say about five minutes after that something happened?

[72] A. About five minutes after that, we sighted the red light on the 'Montrose.' * * *

* * *

[73] Q. You have seen the blueprint of this bend?

A. Yes, sir.

Q. Were there any banks or obstructions?

A. There is a bank there, but it is cut down, especially on the south side.

Q. Does it interfere with vision at all?

A. No, we could see the lights of the Summit Bridge, I guess a minute after we blowed him one whistle.

Q. Summit Bridge was how far away from where you were at that time?

[74] A. Probably about a mile.

Q. So he was about halfway between Summit Bridge and where you were when you first blew the whistle, if he was half a mile from you?

A. No, that is when we had the collision.

* * *

[94] Q. About how long was that before the collision?

A. Maybe a quarter of a minute or a half minute.

* * *

[117] By The Court:

Q. Captain, you say it was two hundred feet away when you saw both red and green lights, and half a minute later or thirty seconds later there was the impact?

A. Yes, sir.

Q. In other words, the impact happened within thirty seconds after?

A. It was less than half a minute, Your Honor.

[151] Q. Now, could you determine, after seeing the red light of the 'Montrose' about how far away it was—that is approximately—I know you did not measure it?

A. Approximately a half mile.

Q. Did you continue to observe the 'Montrose' up to the time of the collision?

A. Yes, sir

[153] Q. As I get your answer to Judge Ganey's question, you only had both lights momentarily?

A. That is right.

Q. Then the red shut out and you saw the green?

A. That is right.

Q. It all happened——

A. All happened just in a moment. (Snapped fingers.)"

* * *

MATE H. T. GEDDES.

[205] "Q. How far away was she (the 'Montrose') from you when she showed both her lights?

A. Oh, possibly two hundred and fifty feet.

Q. How long after she showed both her lights did she show the green light?

A. That was only an instant; there was no sheer.

Q. What do you mean by sheer?

A. Turning.

Q. Which way was she maneuvering?

A. Then she was sheering to port.

[206] Q. After she was making this sheer to port, and she had shown you her red light, then both her lights, and then her green light, which you say was just a moment—is that correct?

A. That is right.

Q. Did you receive any orders from Captain Middleton about that time?

A. Well, about the time that sheer was taken and the lights were changing, I got orders to blow a danger signal.

Q. And what was the order you received from Captain Middleton?

A. He said, 'You better blow him a danger signal.'

Q. Did you blow the danger signal?

A. I did.

Q. What was the danger signal you blew?

A. Several short, rapid blasts of the steam whistle.

Q. How many, if you recall?

A. I just don't recall how many, because at the same time I sent out a general alarm—when that occurred I put on the electrical switch and got the boys up. • • •

[207] Q. And how soon after you sent out this general alarm was that collision?

A. Just an instant.

[210] A. Well, about the time—immediately after I gave orders for the danger signal, or about the same time, I got four whistles from the bridge, followed by rapid whistles, which means we can hurry up, or full speed, I full speeded the engines astern, which was done immediately.

Q. Was that done prior to or at the time or after the collision?

A. That was done before the collision.''

• • •

ENGINEER GEORGE PAULL.

[171] ''Q. After you heard this whistle what did you do?

A. Why, during the same time, someone came in the engine room door and says, 'Looks like we are going to be hit with a ship.' ''